

**United States Small Business Administration
Office of Hearings and Appeals**

CVE Appeal of:

Watanabe Enterprises, LLC,

Appellant,

SBA No. CVE-218-A

Decided: January 24, 2022

ORDER DISMISSING APPEAL¹

I. Background

On January 4, 2022, the U.S. Department of Veterans Affairs, Center for Verification and Evaluation (CVE), issued a decision cancelling the verified status of Watanabe Enterprises, LLC (Appellant) as a Service-Disabled Veteran-Owned Small Business.

In its decision, CVE explained that, as part of a verification review, CVE learned that Appellant had changed its ownership structure without notifying CVE. (Notice of Verified Status Cancellation, at 1-2.) Appellant originally was wholly-owned by Mr. George I. Watanabe, a service-disabled veteran. (*Id.* at 2.) However, according to a new version of Appellant's Operating Agreement dated September 8, 2020, George Watanabe now owns only 55% of Appellant, and the remaining 45% interest is held by James G. Watanabe, who is not a service-disabled veteran. (*Id.*) Appellant provided no explanation of the role of James Watanabe in Appellant's business operations. (*Id.*) Furthermore, while one section within Appellant's Operating Agreement stated that both Watanabes are managers of Appellant, another section of the same document identified James Watanabe as the sole manager. (*Id.* at 2-3.) CVE therefore could not determine whether a service-disabled veteran holds Appellant's highest officer position, or whether a non-service-disabled veteran controls Appellant's decision-making. (*Id.* at 2-4.) CVE also noted that Appellant's Operating Agreement requires a supermajority vote of at least 85% of the membership interest in order to remove a manager. (*Id.* at 3.) Under Appellant's new ownership structure, George Watanabe no longer holds sufficient ownership interest to take such action, and as a result he does not fully control Appellant. (*Id.*)

On January 5, 2022 and January 7, 2022, Appellant transmitted three e-mails to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA), entitled "Watanabe Enterprises CVE Appeal," "Watanabe Enterprises CVE Appeal doc," and "Fwd: Draft Response for Editing as Needed." Because the e-mails did not explain why CVE's cancellation decision was alleged to be erroneous, as required by 13 C.F.R. §§ 134.1105(a)(2)

¹ This appeal is decided under 38 U.S.C. § 8127(f)(8)(A) and 13 C.F.R. part 134 subpart K.

and 134.1111, OHA directed Appellant to submit a proper appeal petition no later than January 19, 2022.

On January 18, 2022, Appellant filed a revised version of its appeal. Appellant acknowledges that it is currently 55% owned George Watanabe and 45% owned by James Watanabe. (Appeal at 1.) Appellant is “[g]uilty” of failing to promptly inform CVE of the new ownership structure. (*Id.*) Appellant further acknowledges that a provision in its Operating Agreement shows James Watanabe as Appellant's sole manager, “[w]hich would indicate that a non-veteran has 100% control of the company.” (*Id.*) Appellant states that it drafted this portion of the Operating Agreement based on the advice of legal counsel. (*Id.*) Appellant highlights that the Operating Agreement elsewhere states that George Watanabe and James Watanabe both are managers of Appellant. (*Id.* at 2.) Therefore, Appellant maintains, George Watanabe, as a manager and majority owner, still controls Appellant. (*Id.*)

II. Analysis

The instant appeal is deficient and must be dismissed. Like the three e-mails Appellant originally transmitted to OHA, the instant appeal does not identify any error in CVE's decision, nor does Appellant contend that CVE committed any errors. CVE based the cancellation decision, in part, on Appellant's failure to explain the role of James Watanabe in Appellant's business operations, and on a supermajority voting provision in Appellant's Operating Agreement. Section I, *supra*. On appeal, though, Appellant makes no mention of these issues, and does not attempt to argue that these portions of CVE's decision were erroneous. *Id.* Appellant concedes that it did not promptly inform CVE of changes in ownership and management, oversights which are, by themselves, grounds for cancellation under 38 C.F.R. § 74.21(d). *Id.* Moreover, Appellant acknowledges, as CVE determined, that Appellant's Operating Agreement contains contradictory provisions as to whether James Watanabe, a non-service-disabled veteran, is Appellant's sole manager. *Id.* Given these conflicting provisions, Appellant has not shown any reason to believe that CVE erred in concluding that Appellant's Operating Agreement does not clearly demonstrate that George Watanabe controls Appellant.

Under OHA's rules of procedure, a proper CVE appeal petition must include “[a] statement of why the cancellation or denial is in error.” 13 C.F.R. § 134.1105(a)(2). Such information is essential because, in a CVE appeal proceeding, the appellant has the burden of proving, by a preponderance of the evidence, that CVE's cancellation decision is based upon a clear error of fact or law. 13 C.F.R. § 134.1111. Here, Appellant has not alleged any error on the part of CVE, and it does not appear that Appellant disputes CVE's key findings or analysis. Accordingly, this appeal is defective and must be dismissed. *CVE Appeal of Rock Int'l Envtl. Corp.*, SBA No. CVE-168-A, at 1 (2020) (dismissing appeal that merely “request[ed] that OHA allow Appellant to remain verified but has not articulated any valid basis for OHA to disturb CVE's decision”); *CVE Appeal of Arctic Tundra Supply and Servs. LLC*, SBA No. CVE-130-A (2019); *CVE Appeal of Secure2ware, Inc.*, SBA No. CVE-111-A, at 2 (2019) (rejecting appeal that “d[id] not include any statements, arguments, or evidence as to why the CVE's determination was based on clear error of fact or law”).

III. Conclusion

For the above reasons, the appeal is DISMISSED. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127(f)(8)(A); 13 C.F.R. § 134.1112(d); 38 C.F.R. § 74.22(e).

KENNETH M. HYDE
Administrative Judge